Update to U.S. Supreme Court Year in Review/
Evidence in the Eighth Circuit

Dixon v. United States, ____ U.S. ____, ____ S. Ct. ____, 2006 WL 1698998 (6/22/2006). Trial court's refusal of jury instruction placing the burden on the government to disprove defendant's duress defense beyond a reasonable doubt did not violate the Due Process Clause; the defense did not contradict or disprove any element of the statutory offense charged. (Op. by Stevens, J., 7-2 split. Kennedy, J., concurring. Alito, J., concurring. Breyer, J., dissenting, joined by Souter, J.)

Fernandez-Vargas v. Gonzales, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1698970 (6/22/2006). A 1996 amendment to immigration law which enlarged the class of illegal reentrants for whom previous orders of removal could be reinstated was not impermissibly applied retroactively to an illegal reentrant who reentered the United States before the effective date of the amendment; removal of "before-or-after" language from the statute supported an inference that date of departure with respect to the effective date was irrelevant. (Op. by Souter, J., 8-1 split. Stevens, J., dissenting).

Burlington Northern & Santa Fe Railway Co. v. White, ___ U.S. ___, __ S. Ct. ___, 2006 WL 1698953 (6/22/2006). The Supreme Court holds in this case the anti-retaliation provision of Title VII "extends beyond workplace-related or employment-related retaliatory acts and harm;" retaliation is actionable by proof "a reasonable employee would have found the challenged action materially adverse . . . 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'" This objective standard is context-dependent to account for actions which might be "immaterial in some situations [but] material in others;" the fact finder is to focus on "the materiality of the challenged action and the perspective of a reasonable person in plaintiff's position," an analysis which the Court believes will "screen out trivial conduct." (Op. by Breyer, J., unanimous decision, Alito, J., concurring in judgment)

Woodford v. Ngo, ____ U.S. ____, ____ S. Ct. ____, 2006 WL 1698937 (6/22/2006). The exhaustion requirement of the Prison Litigation Reform Act requires that administrative remedies must be exhausted properly, i.e., as directed by the system's procedural rules. (Op. by Alito, J, 6-3 split. Breyer, J., concurring in judgment. Stevens, J., dissenting, joined by Souter and Ginsburg, JJ.)

Rapanos v. United States, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1667087 (6/19/2006). Wetlands which were adjacent to drainage ditches or man-made drains which eventually emptied into navigable waters(such as a river, ocean or lake) are not adjacent to "waters of the United States," which status would permit the Corps of Engineers to apply the Clean Water Act jurisdiction over them for regulation purposes. (Op. by Scalia, J., 5-4 split. Roberts, C.J., concurring. Kennedy, J. concurring in judgment. Stevens, J., dissenting, joined by Souter, Ginsburg and Breyer, JJ. Breyer, J., dissenting)

Samson v. California, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1666974 (6/19/2006). A parolee does not have Fourth Amendment protection from suspicionless search by a police officer. (Op. by Thomas, J.; 6-3 split; Stevens, J., dissenting, joined by Souter and Breyer, JJ.)

Davis v. Washington, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1667285 (6/19/2006).Statements of victim on 911 recording identifying defendant as her assailant were not testimonial as the victim was answering a dispatcher's questions about emergency events as they were occurring; in comparison, in case considered by the Supreme Court at the same time as the first, statements made by a different victim after events had occurred were testimonial in nature as officers questioned her about what had already happened and they were present with her during the questioning.

Empire Healthchoice Assurance, Inc. v. McVeigh, ___ U.S. ___, __ S. Ct. ___, 2006 WL 1639763 (6/15/2006). A reimbursement claim by a local health insurance carrier administering a health care plan for federal employees in the state of New York did not "arise under federal law" for purposes of jurisdiction under 28 U.S.C. § 1331 even though the carrier's administration of the plan was the result of an OPM contract with the carrier, therefore, suit was not properly brought in federal court. (Op. by Ginsburg, J; 5-4 split; Breyer, J., dissenting, joined by Kennedy, Souter and Alito, JJ.)

Kircher v. Putnam Funds Trust, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1640102 (6/15/2006). This case reminds that an order remanding a case removed from state court is not appealable. This case involved state court actions alleging injuries to holders of mutual fund shares; defendant mutual funds removed the cases to federal court alleging they were covered by the Securities Litigation Uniform Standards Act of 1998. (Op. by Souter, J. Nearly unanimous except as to one part. Scalia, J., concurring in part (I, III, and IV, and in judgment)

Hudson v. Michigan , ____ U.S. ____, ____ S. Ct. ____, 2006 WL 1640577(6/15/2006). Violation of the "knock and announce" rule does not require that evidence found in a subsequent search be suppressed. Here, in the course of executing a search warrant for guns and drugs at defendant's residence, officers announced, but waited only 3-5 seconds before turning the knob on what was an unlocked front door and entering defendant's home. In addition to large quantities of drugs, officers also discovered a loaded gun between the cushion and armrest of the chair in which defendant was sitting at the time they entered. (Op. by Scalia, J., joined by Roberts, C.J., Kennedy, Thomas and Alito, JJ. as to Parts I, II, III. 5-4 split. Part IV Op. by Scalia, J., joined by Roberts, C.J., Thomas and Alito, JJ. Kennedy, J., concurring in part and in judgment. Breyer, J., dissenting, joined by Stevens, Souter and Ginsburg, JJ.)

Howard Delivery Service, Inc. v. Zurich American Ins. Co., ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1639224 (6/15/2006). Unpaid workers' compensation premiums are not entitled to priority as contributions to an employee benefit plan, but rather with liability insurance premiums. (Op. by Ginsburg, J. 6-3 split. Kennedy, J., dissenting, joined by Souter and Alito, JJ.)

House v. Bell, ____ U.S. ____, ____ S. Ct. ____, 2006 WL 1584475 (6/12/2006). The "actual innocence" gateway exception to procedural default of Schlup v. Delo, was met in this case -- the Court is not required to be absolutely certain about a defendant's guilt or innocence; a defendant's burden is to show it is "more likely than not, any reasonable juror would have reasonable doubt;" and the standard which governs the question of insufficiency of evidence does not apply -- rather "the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record." (Op. by Kennedy, J., 5-3 split (Alito, J., taking no part), Roberts, C.J., concurring in judgment in part an dissenting in part, joined by Scalia and Thomas, JJ.)

Hill v. McDonough, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 1584710 (6/12/2006). Inmate subject to execution may challenge the mode of execution by means of a civil rights action under 42 U.S.C. § 1983 as such a challenge would not bar the inmate's execution; the filing of such an action would not automatically stay an execution and the inmate must satisfy requirements for stay; also there is a "strong equitable presumption against" granting a stay when the § 1983 claim could have been brought earlier for consideration of the merits without a stay. (Op. by Kennedy, J.; unanimous)

Zedner v. United States, ___ U.S. ___, 126 S. Ct. 1976 , 2006 WL 1519360 (6/5/2006). The Speedy Trial Act cannot be prospectively waived, therefore defendant's "for all time" waiver at the time of a third request for continuance was ineffective.(Op. by Alito, J., 7.5-.5 split?, joined by Roberts, C.J., Stevens, Kennedy, Souter, Thomas, Ginsburg and Breyer, JJ., Scalia, J., joined as to all but Part III-A-2, Scalia, J., concurring in part and in judgment)

Anza v. Ideal Steel Supply Corp., ___ U.S. ___, 126 S. Ct. 1991, 2006 WL 1519365 (6/5/2006). RICO requires a direct relation between the conduct which is alleged to have caused injury and the injury -- here the connection between plaintiff's claim of lost sales and its competitor failing to charge state sales tax to its customers and filing fraudulent state tax returns was "too attenuated" to satisfy the direct connection requirement. (Op. by Kennedy, J.,(7-1 split), joined by Roberts, C.J., and Stevens, Scalia, Souter, Ginsburg and Alito, JJ.; Thomas, J. joined as to Part III. Scalia, J., concurring. Thomas, J., concurring in part/dissenting in part; Breyer, J., concurring in part/dissenting in part)

Garcetti v. Ceballos, ____ U.S. ____, 126 S. Ct. 1951, 2006 WL 1458026 (5/30/2006). Statements made by public employees in the course of their official duties are not protected by the First Amendment and therefore are not insulated discipline by an employer. (Op. by Kennedy, J., joined by Roberts, C.J., Scalia, Thomas and Alito, JJ. (5-4 split). Stevens, J., dissenting; Souter, J., dissenting, joined by Stevens and Ginsburg, JJ.; Breyer, J., dissenting)

Brigham City v. Stuart, ____ U.S. ____, 126 S. Ct. 1943 , 2006 WL 1374566 (5/22/2006). After receiving a complaint about a loud party at a residence early in the morning, police officers had an objectively reasonable basis to believe an occupant was seriously injured or in imminent threat of such injury when through a screen door they observed a juvenile punch an adult and saw the adult spit blood in the sink. The officers' entry, after their announced presence went unheard, was reasonable under the circumstances and did not violate the Fourth Amendment. (Op. by Roberts, C.J.; unanimous decision; Stevens, J., concurring)

DaimlerChrysler Corp. v. Cuno , ____ U.S. ____, 126 S. Ct. 1854 (5/15/2006). State taxpayers did not have Article III standing to challenge state action offering local property tax exemptions and state franchise tax credits to entice a corporation to expand its operations in the state. (Op. by Roberts, C.J., joined by Stevens, Scalia, Kennedy, Souter, Thomas, Breyer, and Alito, J.J.; Ginsburg, J., concurring in part and concurring in judgment)

eBay, Inc. v. MercExchange, L.L.C., ___ U.S. ___, 126 S. Ct. 1837 (5/15/2006). The traditional four-factor test in determining whether to award permanent injunctive relief is applicable to suits under the Patent Act. (Op. by Thomas, J.; unanimous decision; Roberts, C.J., concurring op. joined by Scalia and Ginsburg, JJ.; Kennedy, J., concurring op. joined by Stevens, Souter, and Breyer, JJ.)

S.D. Warren Co. v. Maine Bd. of Environmental Protection, ___ U.S. __, 126 S. Ct. 1843(5/15/2006). The Clean Water Act requirements of state approval of any activity resulting in discharge into navigable waters applies to hydroelectric dams. (Op. by Souter, J., joined by Roberts, C.J., Stevens, Kennedy, Thomas, Ginsburg, Breyer and Alito, JJ., joined; Scalia, J., joined as to all but Part III-C).

Sereboff v. Mid Atlantic Medical Services, Inc., ___ U.S. ___, 126 S. Ct. 1869 (5/15/2006). ERISA administrator's action to recover medical benefits paid to a plan beneficiary from proceeds of the beneficiary's tort law settlement with a third party was an action for "equitable relief" properly brought under ERISA. (Op. by Roberts, C.J.; unanimous decision)

II.

Evidence in the Eighth Circuit

Rule 702

Wagner v. Hesston Corp. , 2006 WL 1549004 (8th Cir. 6/8/2006). District court did not abuse its discretion in excluding plaintiff's expert testimony concerning design defects in a hay baler; there was no testing of the expert's alternative design, nor was the peer review, or general acceptance and the evidence indicated the alternative design theory was developed in the context of litigation.

Robinson v. GEICO General Ins. Co., 2006 WL 1359658 (8th Cir. 5/19/2006). Plaintiff unsuccessfully challenged the admissibility of defendant's expert, a neurologist, on the basis that his expertise as a neurologist was not the same as her expert, an orthopedist -- Rule 702 does not require a defense medical expert to have the "identical medical specialty."